

Wage and Hour Division, Labor

§ 783.33

WHO IS "EMPLOYED AS A SEAMAN"

§ 783.31 Criteria for employment "as a seaman."

In accordance with the legislative history and authoritative decisions as discussed in §§ 783.28 and 783.29, an employee will ordinarily be regarded as "employed as a seaman" if he performs, as master or subject to the authority, direction, and control of the master aboard a vessel, service which is rendered primarily as an aid in the operation of such vessel as a means of transportation, provided he performs no substantial amount of work of a different character. This is true with respect to vessels navigating inland waters as well as ocean-going and coastal vessels (*Sternberg Dredging Co. v. Walling*, 158 F. 2d 678; *Walling v. Haden*, 153 F. 2d 196, certiorari denied 328 U.S. 866; *Walling v. Great Lakes Dredge & Dock Co.*, 149 F. 2d 9, certiorari denied 327 U.S. 722; *Douglas v. Dixie Sand and Gravel Co.*, (E.D. Tenn.) 9 WH Cases 285). The Act's provisions with respect to seamen apply to a seaman only when he is "employed as" such (*Walling v. Haden*, supra); it appears also from the language of section 6(b)(2) and 13(a)(14) that they are not intended to apply to any employee who is not employed on a vessel.

§ 783.32 "Seaman" includes crew members.

The term "seaman" includes members of the crew such as sailors, engineers, radio operators, firemen, pursers, surgeons, cooks, and stewards if, as is the usual case, their service is of the type described in § 783.31. In some cases it may not be of that type, in which event the special provisions relating to seamen will not be applicable (*Sternberg Dredging Co. v. Walling*, 158 F. 2d 678; *Cuascut v. Standard Dredging Co.*, 94 F. Supp. 197; *Woods Lumber Co. v. Tobin*, 199 F. 2d 455). However, an employee employed as a seaman does not lose his status as such simply because, as an incident to such employment, he performs some work not connected with operation of the vessel as a means of transportation, such as assisting in the loading or unloading of freight at the beginning or end of a voyage, if the

amount of such work is not substantial.

§ 783.33 Employment "as a seaman" depends on the work actually performed.

Whether an employee is "employed as a seaman", within the meaning of the Act, depends upon the character of the work he actually performs and not on what it is called or the place where it is performed (*Walling v. Haden*, 153 F. 2d 196; *Cuascut v. Standard Dredging Corp.*, 94 F. Supp. 197). Merely because one works aboard a vessel (*Helena Gledale Ferry Co. v. Walling*, 132 F. 2d 616; *Walling v. Bay State Dredging & Contracting Co.*, 149 F. 2d 346), or may be articulated as a seaman (see *Walling v. Haden*, supra), or performs some maritime duties (*Walling v. Bay State Dredging & Contracting Co.*, 149 F. 2d 346; *Anderson v. Manhattan Lighterage Corp.*, 148 F. 2d 971) one is not employed as a seaman within the meaning of the Act unless one's services are rendered primarily as an aid in the operation of the vessel as a means of transportation, as for example services performed substantially as an aid to the vessel in navigation. For this reason it would appear that employees making repairs to vessels between navigation seasons would not be "employed as" seamen during such a period. (See *Desper v. Starved Rock Ferry Co.*, 342 U.S. 187; but see *Walling v. Keansburg Steamboat Co.*, 162 F. 2d 405 in which the seaman exemption was allowed in the case of an article employee provided he also worked in the ensuing navigation period but not in the case of unarticled employees who only worked during the lay-up period.) For the same and other reasons, stevedores and longshoremen are not employed as seamen. (*Knudson v. Lee & Simmons, Inc.*, 163 F. 2d 95.) Stevedores or roustabouts traveling aboard a vessel from port to port whose principal duties require them to load and unload the vessel in port would not be employed as seamen even though during the voyage they may perform from time to time certain services of the same type as those rendered by other employees who would be regarded as seamen under the Act.